

Special Advisor

August 1, 07



Information for Human Resources and Business Risk Professionals in the Colorado State Personnel System

STATEWIDE UNIVERSAL LEAVE POLICIES FINALIZED

The Department of Personnel & Administration (DPA) is in the process of reexamining all of its rules and policies. It is through this review process that DPA reevaluated the application of bereavement leave, sick leave related Family Medical Leave (FML) and pregnancy, and leave sharing during the Short Term Disability (STD) waiting period. The application of the rules is being updated to better reflect the intent behind the rules, balance the needs of our employees and the requirements of the State, and to provide consistency in application. Employees are expected to continue to adhere to all departmental policies and procedures for requesting leave in advance and coordinating work schedules. The application of these policies is in effect as of July 1, 2007.

Bereavement Leave

Director's Rule 5-17 provides up to 40 hours of paid leave for the death of a family member or other person with whom the employee has a relationship. The definition of family member and other is purposely broad because today's families do not reflect the traditional family structure. In addition, there are other relationships that have a significant impact on an employee's life, e.g., family friend, neighbor, college roommate.

Bereavement leave goes beyond attendance at a traditional funeral. The leave is intended to be the expression of the employer's sympathy by providing time off to grieve a loss, which may include a service or gathering. However, bereavement leave is not intended to deal with business such as settling the estate.

Supervisors and employees have mutual responsibility to engage in a dialogue so that the employee's needs are clear. Employees are expected to request the amount of leave needed in writing and communicate their needs to the supervisor. This includes stating the nature of the relationship and the employee's needs related to grieving and any service or gatherings.

For supervisors determining the amount of leave to approve, the employee's needs always have primary consideration over business necessity. Leave approval is based on individual circumstances and will not be the same for all employees. This includes discussing the employee's relationship to the deceased, the distance and mode of transportation to attend any services, and any other needs. This does not mean that supervisors are to judge the relationship, but rather have an understanding of how the employee is impacted when granting the requested leave. If the employee is in need of grief counseling, supervisors can refer employees to CSEAP.

Suspicion of abuse shall be investigated. Any substantiated abuse of leave may be subject to corrective or disciplinary action including termination of employment.

Sick Leave, the Family and Medical Leave Act (FMLA), and the Temporary Disability of Pregnancy and Birth

DPA has reevaluated the application of Director's Rule 5-5 on sick leave related to Family Medical Leave (FML) and pregnancy and the differing amounts of sick leave granted to males and females for the birth of a child. The application of the rule is being updated to better balance the needs in a gender neutral manner.

Director's Rule 5-5 is very specific that sick leave is only for the health-related reasons of the employee, spouse, parent, or child. Health reasons include diagnostic and preventative exams, treatment, and recovery. Under federal law and state rule, the temporary physical incapacity due to pregnancy, childbirth, and recovery from childbirth is considered a serious health condition and eligible for sick leave. The key issue here is the recovery period after childbirth, which can go beyond the mother's hospital stay. All conditions that are covered under the Family and Medical Leave Act (FMLA) need to be examined carefully to ensure that the appropriate leave is designated. The duration and type of leave is always specific to the individual circumstances and driven by the medical certificate completed by a health care provider.

For employees needing to take leave for the temporary physical incapacity due to pregnancy and childbirth for themselves or their spouses, the duration of recovery certified by a health care provider will be covered under the sick leave policy to the extent the employee has sick leave available. For example, a male employee requests leave to care for his spouse and provides a valid medical certificate stating the spouse requires four weeks for recovery from childbirth shall be granted four weeks of sick leave to the extent he has the leave available. Once the health care provider certifies that the mother is recovered, sick leave stops for both parents and the remainder of the leave is for care and bonding with the child, which is annual leave to the extent available, followed by unpaid leave. Care and bonding with a child is not a physical or mental incapacity so sick leave is no longer appropriate.

In addition, any medical certificate that is incomplete shall not be accepted. Inadequate certifications shall be returned to the employee to obtain clarification from the medical provider on the duration of the condition or anticipated time of recovery. For example, if a medical certification simply states "the mother gave birth on Saturday, June 10, 2007" and provides no further information about the recovery period or expected duration of the condition, that certification is deemed to be inadequate or incomplete. In the best interest of the employee and the State, departments are obligated to request additional information. Employees must be provided at least 15 calendar days to obtain this clarification.

This policy applies to all current (as of July 1, 2007) and all future designated conditions. Departments must remember that STD leave and benefits may also apply to mothers giving birth and must ensure that adequate notice of the eligibility and application requirements for the leave are provided in conjunction with FMLA rights and STD benefits.

Departments must carefully review certification forms and the corresponding leaves granted and make any necessary adjustments to leave accruals, i.e., restore annual leave and charge sick leave for the recovery period.

Donated Leave and Short-Term Disability

During the STD waiting period, if an employee has exhausted all sick and annual leave, departments may adjust their programs to allow leave sharing for qualified events to cover the remainder of the STD waiting period. However, donated leave may not be used to make the employee's salary whole once STD salary replacement begins nor extend the 30 day waiting period.

Further technical guidance can be obtained under Time Off on DHR's Web site at www.colorado.gov/dpa/dhr/rules/techasst.htm. For questions or comments contact Joi Simpson, Statewide FMLA/Leave Coordinator at 303.866.5496 or joi.simpson@state.co.us.